

INVENTOR  
TRADEMARK  
OFFICE  
Docket No.: KCC-15219

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Duane Girard UITENBROEK, et al.

Serial No.: 09/698,595

Group No.: 1771

Filing Date: 27 October 2000

Examiner: Andrew Piziali

Title: ELASTOMERIC, BREATHABLE  
LAMINATE WITH ENHANCED  
BREATHABILITY UPON EXTENSION

Confirmation No. 8268

Customer No. 35844

**APPEAL BRIEF UNDER 37 CFR §41.37**

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants herewith file their Appeal Brief in the above-identified case, pursuant to their Notice of Appeal filed 12 January 2005.

**1. REAL PARTY IN INTEREST**

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of the present application (as recorded at reel 011584, frame 0351).

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02 March 2005

3-2-05  
Date

Margaret M. Crossley  
Signature

**2. RELATED APPEALS AND INTERFERENCES**

Applicants are not aware of any related appeals or interferences with regard to the present Application.

**3. STATUS OF CLAIMS**

Claims 1-44 are pending in the application. The present Appeal is directed to Claims 1-44, which were finally rejected in an Office Action mailed 19 October 2004.

**4. STATUS OF AMENDMENTS**

No amendment was filed subsequent to the most recent final rejection.

**5. SUMMARY OF CLAIMED SUBJECT MATTER**

Pending claims 1-44 include 4 independent claims: Claim 1, Claim 19, Claim 30 and Claim 41. Independent Claims 1 and 19 are each directed to a breathable laminate. Independent Claim 30 is directed to an outer cover for absorbent articles. Independent Claim 41 is directed to a method of making an outer cover for absorbent articles.

Claim 1 is directed to a breathable laminate 40 shown in Figures 1 and 4. The breathable laminate 40 comprises a breathable, microporous, elastic film 32 and a nonwoven facing material 12 bonded to the film 32. (Page 10, lines 8-10, Figs. 1 and 4.) As implied by the term "breathable," the elastic film 32 is already breathable prior to formation of the laminate. The breathable, elastic film 32 is suitably a microporous film in which voids impart breathability to the film. (Page 11, lines 1-5.) Such microporous breathable films are well known in the art. (Page 11, lines 7-10.) Thus, the initial breathability of the laminate 40 is essentially equal to the breathability of the film layer 32. (Page 10, lines 8-13.) The laminate 40 includes zones of differential breathability 54 (zones of higher breathability) and 56 (zones of moderate breathability). The zones of higher breathability 54 are zones that have been further stretched after the laminate 40 has been formed. The laminate 40 is selectively stretched in one or more regions to form zones of differential breathability. (Page 26, line 18 to Page 27, line 9; Fig. 4; Page 10, lines 18-22; and Page 25, lines 14-15.) As defined on page 8, lines 10-14, the term

“selectively stretched” refers to stretching certain regions of a material to a greater extent than other regions of the material. Finally, each of the zones of differential breathability 54 and 56 comprises a portion of the film 32 and a portion of the facing material 12. (Fig. 4; Page 26, line 18 to Page 27, line 9.)

Claim 19 is directed to a breathable laminate 40 shown in Figures 1 and 4. The breathable laminate 40 comprises a breathable, microporous, elastic film 32 having a first water vapor transmission rate before lamination. (Page 10, lines 8-18.) A nonwoven facing material 12 is bonded to the film 32 (Page 10, lines 18-21; Fig. 4.) The laminate includes at least one zone of moderate breathability 56. (Page 26, lines 18-22; Fig. 4.) Since the initial breathability (after bonding) of the laminate 40 (expressed as water vapor transmission rate, WVTR) is essentially equal to the breathability of the film 32 (Page 10, lines 8-18), the WVTR of the zone of moderate breathability 56 is not greater than the first WVTR of the film. The laminate also includes at least one zone of higher breathability 54. The zones of moderate breathability 56 have a WVTR lower than the WVTR of the zones of higher breathability 54. (Page 26, lines 21-22.) A zone of higher breathability 54 has a WVTR at least 10% higher than an adjacent zone of moderate breathability 56, and therefore at least 10% higher than the WVTR of the film. (Page 10, lines 21-22.) Finally, each of the zones of moderate breathability 54 and each of the zones of higher breathability 56 comprises a portion of the film 32 and a portion of the facing material 12. (Fig. 4; Page 26, line 18 to Page 27, line 9.)

Claim 30 is directed to an outer cover for absorbent articles. The outer cover comprises a breathable laminate 40. The breathable laminate 40 is particularly useful as an outer cover for diapers and other personal care products. (Page 3, lines 21-22; and Page 10, lines 3-7.) The breathable laminate 40 comprises a breathable, microporous, elastic film 32 and a nonwoven facing material 12 bonded to the film 32. (Page 10, lines 8-10, Figs. 1 and 4.) As implied by the term “breathable,” the elastic film 32 is already breathable prior to formation of the laminate. The breathable, elastic film 32 is suitably a microporous film in which voids impart breathability to the film. (Page 11, lines 1-5.) Such microporous breathable films are well known in the art. (Page 11, lines 7-10) Thus, the initial breathability of the laminate 40 is essentially equal to the breathability of the film layer 32. (Page 10, lines 8-13.) The laminate 40 is selectively stretched in one or more regions to form zones of differential breathability. (Page 26, line

18 to Page 27, line 9; Fig. 4; Page 10, lines 18-22; and Page 25, lines 14-15.) As defined on page 8, lines 10-14, the term “selectively stretched” refers to stretching certain regions of a material to a greater extent than other regions of the material. Finally, each of the zones of differential breathability 54 and 56 comprises a portion of the film 32 and a portion of the facing material 12. (Fig. 4; Page 26, line 18 to Page 27, line 9.)

Claim 41 is directed to a method of making an outer cover for absorbent articles. The method includes the step of forming a breathable laminate 40 by bonding a nonwoven facing material 12 to a breathable microporous, elastic film 32. The facing material 12 and the breathable elastic film 32 are nipped together in the bonder roller arrangement to form a breathable laminate 40. (Page 22, line 20 to Page 23, line 22.) As defined on page 8, lines 10-14, the term “selectively stretched” refers to stretching certain regions of a material to a greater extent than other regions of the material. After formation of the breathable laminate 40, the method includes the step of selectively stretching the breathable laminate 40 in one or more regions to form zones of differential breathability. (Page 24, lines 1-21.) Finally, each of the zones of differential breathability 54 and 56 comprises a portion of the film 32 and a portion of the facing material 12. (Fig. 4; Page 26, line 18 to Page 27, line 9.)

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The issue presented for review is as follows:

Whether Claims 1-44 are unpatentable under 35 U.S.C. 103(a) over Dailey, et al. (U.S. Patent No. 5,036,551, hereinafter “Dailey”) in view of U.S. Statutory Invention Registration H1750 to Dobrin in view of Kitamura, et al. (U.S. Patent No. 4,829,096, hereinafter “Kitamura”). All claims under consideration may be considered as a group and stand or fall together.

## 7. ARGUMENT

In the final Office Action, mailed 19 October 2004, the Examiner rejected claims 1-44 under 35 U.S.C. 103(a) as being unpatentable over Dailey in view of Dobrin in view of Kitamura. All claims under consideration may be considered as a group and stand or fall together.

**A. The prior art does not teach 1.) that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material; or 2.) “selective stretching”**

One factor in establishing a *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all the claim limitations. Kitamura, alone or in combination with Dobrin and/or Dailey, does not disclose or suggest: 1.) a laminate wherein *each of the zones of differential breathability comprises a portion of the film and a portion of the nonwoven facing material*; or 2.) a laminate that is selectively stretched to form zones of differential breathability.

**1.) The prior art does not teach that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material.**

Applicants' position is that Applicants' claims (all Independent Claims 1, 19, 30 and 41) require that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material, and that Dobrin in view of Dailey in view of Kitamura does not disclose or suggest this claim limitation. On page 6 of the Final Office Action, the Examiner states in response to this argument that “The examiner contends that Dailey in view of Dobrin in view of Kitamura discloses the claimed laminate.”

Dobrin does not teach that *each of the zones* includes a portion of the film and a portion of the nonwoven facing material. This claim limitation is clearly missing in Dobrin. The first breathable zone 82 comprises the outer layer (the nonwoven facing layer) and the inner layer (the film). However, the second breathable zones 80 comprise only the outer layer (the nonwoven facing) (Col. 9, lines 18-22, and Fig. 3). Although Dobrin discloses different breathable zones, not all of the zones include both a portion of

the film and a portion of the nonwoven. Even if Dobrin were combined with Dailey and Kitamura, there would be no suggestion to a person skilled in the art to extract the “stretching a film to impart breathability” concept from Kitamura and insert this concept into the Dailey laminate, because, in Dobrin, it is critical to have zones that do not comprise both the film and nonwoven because this is how the difference in breathability between the zones is accomplished. The Examiner relies on Dobrin to teach zones of differential breathability. (Final Office Action, page 7.) Therefore, Dobrin teaches away from the concept of having all of the zones include a portion of the film and a portion of the nonwoven facing material.

Therefore, the prior art does not teach that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material.

**2.) *The prior art does not teach “selective stretching”***

On page 7 of the Final Office Action, the Examiner admits that “Dobrin is silent with regard to a feasible method of forming zones of differential breathability in the laminate of Dailey,” and then suggests that “it would have been obvious to look to the prior art for a feasible method.” The Examiner then states that Kitamura’s “teaching showing that it is known in the art to stretch a film to impart breathability thereto” is the “feasible method” of forming zones of differential breathability in the laminate of Dailey.

Thus, the Examiner’s argument is that Kitamura teaches “selective stretching” which could be used to achieve the limitation that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material. Applicants respectfully disagree.

Applicants’ Independent Claims, 1, 30 and 41 each require that the laminate is “selectively stretched” to forms zones of differential breathability. Although Independent Claim 19 does not recite this “selectively stretched” limitation, it does require that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material, as does Independent Claims 1, 30 and 41.

On page 3 of the Final Office Action, the Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made “to make the zones of differential breathability from any suitable method, such as

by selective stretching, as taught by Kitamura, because stretching is capable of forming the differential zones of breathability.” [Emphasis added.]

Applicants respectfully disagree that Kitamura teaches “selectively stretching” a laminate to form zones of differential breathability. The Specification defines “Selectively stretched” on page 8 as follows:

“Selectively stretched” refers to stretching certain regions of a material to a greater extent than other regions of the material. The selection of the regions to be stretched to a greater extent can be strategically planned based on a desired level of breathability in those regions of the material, with the regions stretched to a greater extent having higher breathability than the regions stretched to a lesser extent.”

Kitamura discloses a breathable film. Breathability is imparted to the film by uniaxially or biaxially stretching. (Col. 4, lines 2-3.) Kitamura does not suggest stretching any region of the film to a greater extent than any other region of the film to achieve different zones of breathability within the film.

On page 8 of the Final Office Action in the “Response to Arguments” section, the Examiner further states that he disagrees that the prior art does not teach or suggest selective stretching and states: “In view of the teachings of Dobrin, the fabric of Dailey desirably possesses select zones of higher and lower breathability. Considering that Kitamura discloses that it is known in the art to stretch a fabric to increase breathability, it would have been obvious to make the zones of differential breathability in the laminate of Dailey by selectively stretching the laminate motivated by the expectation of successfully creating zones of differential breathability.” However, as previously stated, Applicants disagree that Kitamura, alone or in combination with Dailey and/or Dobrin, teaches selective stretching or that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material.

The Examiner does not point to any specific passage within Kitamura, or Dobrin or Dailey, that teaches or suggests “selective stretching.” “Selective stretching” does not constitute “any suitable method” to make zones of differential breathability **because Kitamura does not teach or suggest stretching a portion of the film to a greater extent than another portion of the film.**

By stating that Kitamura teaches selective stretching, the Examiner is jumping to the broad conclusion that stretching a film to initially impart uniform breathability across the film is equivalent to selectively stretching a laminate to enhance the breathability of selected zones within an already uniformly breathable starting film component of the laminate. As stated above, Kitamura does not teach or suggest stretching certain regions of a film to a greater extent than other regions of the same film. Rather, Kitamura describes the basic premise and general state of the art of combining a polymeric resin and a filler to form a film, and imparting breathability uniformly across a film by the use of stretching. More specifically, Kitamura provides a teaching for “a breathable film which has not only excellent film moldability and film stretchability but also high breathability, good touch and appearance and high strength” as it had been previously recognized that “techniques to increase the breathability ... decrease film moldability and the strength of formed films, and thus, are limited in their use.” (Col. 1, lines 26-40.)

This concept of uniform stretching of a film to impart breathability to a non-breathable starting film is well known in the art. Applicants’ Specification recognizes this uniform stretching and explains the difference between uniform stretching and selective stretching. As stated in the Specification: “The film 32 can be initially uniformly stretched to impart a moderate level of breathability across the film 32.” (Specification, page 15, lines 4-5.) “After the film 32 and the facing material 12 are bonded, the laminate 40 can be stretched in some or all areas of the laminate 40 to impart higher breathability in the stretched zones.” (Specification, page 10, lines 18-21.) Thus, Applicants’ starting film (which is a component of the laminate) is already breathable prior to selectively stretching the laminate. The second stretch (*i.e.*, the “selective stretching”) of the film within the laminate is used to alter or enhance the breathability in selected zones of the laminate. Kitamura does not suggest selectively stretching a film that is already breathable or that the breathable film taught therein can be selectively stretched in one or more regions to achieve zones of differential breathability. Therefore, Kitamura teaches only uniform stretching.

Furthermore, Kitamura does not teach uniformly stretching or selectively stretching a laminate.

Therefore, the prior art teaches neither selective stretching, nor that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material.

Therefore, the prior art does not teach all of the claim limitations and this rejection should be withdrawn. For at least these reasons, this rejection should be withdrawn.

#### **B. The Examiner used Hindsight**

Another criterion for establishing a *prima facie* case of obviousness is that there must be a reasonable expectation of success. Absent impermissible hindsight, a person skilled in the art would not logically combine the teachings of Dobrin with the teachings of Kitamura and Dailey to render Applicants' claimed invention. Applicants respectfully urge that the Examiner has not provided a proper motivation to combine the references.

As previously mentioned, on page 8 of the Final Office Action, the Examiner states "In view of the teachings of Dobrin, the fabric of Dailey desirably possesses select zones of higher and lower breathability. Considering that Kitamura discloses that it is known in the art to stretch a fabric to increase breathability, it would have been obvious to make the zones of differential breathability in the laminate of Dailey by selectively stretching the laminate motivated by the expectation of successfully creating zones of differential breathability." Applicants disagree that this motivation is sufficient.

As stated previously, it is the Applicants' position that the prior art does not teach or suggest a laminate wherein each of the zones of differential breathability comprises a portion of the film and a portion of the facing material, or selective stretching. Furthermore, there is no suggestion in Kitamura, Dobrin or Dailey, alone or in combination, that using selective stretching will achieve zones of differential breathability within a laminate in which each of the zones comprises a portion of the film and a portion of the nonwoven facing material. Thus, in the combination of Dailey, Dobrin and Kitamura, there is no teaching or suggestion to make Applicants' claimed invention, nor is there any reasonable expectation of success.

The Examiner contends that a person having ordinary skill in the art would have been motivated (from the teachings of the references themselves and without the use of impermissible hindsight) to combine the Dailey, Dobrin and Kitamura references to provide the laminate (of Dailey) with zones of differential breathability (taught by Dobrin) wherein each of the zones of differential breathability comprises a portion of the film and a portion of the nonwoven facing material by providing zones of differential breathability by means of stretching the film (taught by Kitamura) to impart breathability. Applicants respectfully disagree.

Applicants' starting film component of the laminate is already breathable and such breathability in the film had already been imparted by some stretching process akin to that taught by Kitamura. Therefore, one skilled in the art would not have looked to Kitamura for "selective stretching" as a way to provide zones of breathability, as the Examiner contends, **because the Kitamura teaching had already been used to provide the initial breathable film component of the laminate with uniform breathability.** Applicants note, as previously mentioned, that the prior art does not teach "selective stretching" to provide zones of differential breathability. Therefore, a person having ordinary skill in the art would have no motivation, or practical teachings, suggested by the references, or in the general state of the art, to practice the combination of the zones of differential breathability described in Dobrin, with the stretching of a non-breathable film to impart uniform breathability described in Kitamura. Therefore, there is no proper motivation for a combination of the references to arrive at the present invention, and the Examiner has not set forth a proper *prima facie* case of obviousness. (MPEP 2143.)

The Examiner appears to be suggesting that the film of Kitamura "could be" selectively stretched to provide zones of differential breathability as taught by Dobrin. In fact, as stated above, on page 3 of the Final Office Action, the Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made "to make the zones of differential breathability from any suitable method, such as by selective stretching, as taught by Kitamura, because stretching is capable of forming the differential zones of breathability." [Emphasis added.]

However, the fact that a prior art device is capable of being modified does not render a combination obvious. Rather, "there must be a suggestion or motivation in the reference to do so." In re Mills, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990). In the instant case, the Examiner has pointed to no suggestion or motivation within Kitamura, or elsewhere, with respect to selective stretching.

Furthermore, a Section 103 rejection "cannot be predicated on the mere identification ... of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." In re Kotzab, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

In the instant case, the Examiner provided no reason why one skilled in the art, without hindsight, would have arrived at the claimed invention. In Kotzab, the Federal Circuit said that the Examiner and Board "fell into the hindsight trap." In re Kotzab, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000). In so concluding, the Federal Circuit said, "The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed." In re Kotzab, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000).

In the instant case, the Examiner found prior art (i.e., Kitamura) that "in the abstract" appeared, **to the Examiner**, to suggest "selective stretching" and that each zone of differential breathability comprises a portion of the film and a portion of the nonwoven facing material. As previously mentioned, Applicants disagree that Kitamura, or any other cited reference, teaches or suggests selective stretching. Even assuming, for the sake of argument, the combination of art teaches selective stretching, the Examiner has provided no finding as to the specific understanding or principle that would have provided a proper motivation for a skilled artisan with no knowledge of Applicants' invention to make the claimed combination.

Therefore, the Examiner used hindsight in making the 35 U.S.C. §103 rejection.

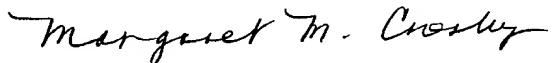
For at least the reasons presented above, Applicants respectfully submit that Claims 1-44 are not rendered obvious by combining Dailey, Dobrin and Kitamura. Thus, Applicants respectfully request withdrawal of this rejection.

### C. Conclusion

For the above reasons, Applicants respectfully submit that the rejections posed by the Examiner are improper as a matter of law and fact. Accordingly, Applicants respectfully request the Board to reverse the rejection of Claims 1-44.

A check for the fee required by 37 CFR 41.37(a)(2) and 37 CFR 41.20(b)(2), in the amount of \$500.00, is attached hereto. Please charge any additional amount owed, or credit any overpayment, to Deposit Account 19-3550.

Respectfully submitted,



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## 8. CLAIMS APPENDIX

1. (Previously presented) A breathable laminate, comprising:  
a breathable, microporous, elastic film; and  
a nonwoven facing material bonded to the film;  
wherein the laminate is selectively stretched in one or more regions thereof to form zones of differential breathability; and  
wherein each of the zones of differential breathability comprises a portion of the film and a portion of the nonwoven facing material.
2. (Original) The laminate of Claim 1, wherein the zones of differential breathability comprise at least one zone of higher breathability and at least one zone of moderate breathability, and the at least one zone of higher breathability has a water vapor transmission rate at least 10% higher than a water vapor transmission rate of the at least one zone of moderate breathability.
3. (Original) The laminate of Claim 1, wherein the zones of differential breathability comprise at least one zone of higher breathability and at least one zone of moderate breathability, and the at least one zone of higher breathability has a water vapor transmission rate at least 30% higher than a water vapor transmission rate of the at least one zone of moderate breathability.
4. (Original) The laminate of Claim 1, wherein the zones of differential breathability comprise at least one zone of higher breathability and at least one zone of moderate breathability, and the at least one zone of higher breathability has a water vapor transmission rate at least 50% higher than a water vapor transmission rate of the at least one zone of moderate breathability.
5. (Original) The laminate of Claim 1, wherein the water vapor transmission rate of the at least one zone of moderate breathability is at least about 500 grams/m<sup>2</sup>-24 hours.

6. (Original) The laminate of Claim 1, wherein the water vapor transmission rate of the at least one zone of moderate breathability is at least about 750 grams/m<sup>2</sup>-24 hours.

7. (Original) The laminate of Claim 1, wherein the water vapor transmission rate of the at least one zone of moderate breathability is at least about 1000 grams/m<sup>2</sup>-24 hours.

8. (Original) The laminate of Claim 1, wherein the laminate is elastomeric.

9. (Original) The laminate of Claim 1, wherein the facing material is necked.

10. (Original) The laminate of Claim 1, wherein the facing material is elastomeric.

11. (Original) The laminate of Claim 1, wherein the selectively stretched regions are stretched at least twice.

12. (Original) The laminate of Claim 1, wherein the laminate can be stretched by about 50% to about 200% in a cross direction.

13. (Original) The laminate of Claim 1, wherein the laminate can be stretched by about 70% to about 170% in a cross direction.

14. (Original) The laminate of Claim 1, wherein the laminate can be stretched by about 100% to about 150% in a cross direction.

15. (Original) The laminate of Claim 1, wherein the laminate can be stretched by about 50% to about 200% in a machine direction.

16. (Original) The laminate of Claim 1, wherein the laminate can be stretched by about 70% to about 170% in a machine direction.

17. (Original) The laminate of Claim 1, wherein the laminate can be stretched by about 100% to about 150% in a cross direction.

18. (Original) An absorbent article outer cover comprising the laminate of Claim 1.

19. (Previously presented) A breathable laminate, comprising:  
a breathable, microporous, elastic film having a first water vapor transmission rate before lamination; and  
a nonwoven, facing material laminated to the film to form the laminate;  
the laminate having at least one zone of moderate breathability with a water vapor transmission rate not greater than the first water vapor transmission rate of the film, and at least one zone of higher breathability with a second water vapor transmission rate at least 10% higher than the first water vapor transmission rate of the film, wherein each of the zone of moderate breathability and the zone of higher breathability comprises a portion of the film and a portion of the nonwoven facing material.

20. (Original) The laminate of Claim 19, wherein the at least one zone of higher breathability has a second water vapor transmission rate at least 30% higher than the water vapor transmission rate of the film.

21. (Original) The laminate of Claim 19, wherein the at least one zone of higher breathability has a second water vapor transmission rate at least 50% higher than the water vapor transmission rate of the film.

22. (Original) The laminate of Claim 19, wherein the first water vapor transmission rate of the film is at least about 500 grams/m<sup>2</sup>-24 hours.

23. (Original) The laminate of Claim 19, wherein the first water vapor transmission rate of the film is at least about 750 grams/m<sup>2</sup>-24 hours.

24. (Original) The laminate of Claim 19, wherein the first water vapor transmission rate of the film is at least about 1000 grams/m<sup>2</sup>-24 hours.

25. (Original) The laminate of Claim 19, wherein the laminate is elastomeric.

26. (Original) The laminate of Claim 19, wherein the facing material is necked.

27. (Original) The laminate of Claim 19, wherein the facing material is elastomeric.

28. (Original) The laminate of Claim 19, wherein the facing material is adhesively bonded to the film.

29. (Original) An absorbent article outer cover comprising the laminate of Claim 19.

30. (Previously presented) An outer cover for absorbent articles, comprising a breathable laminate;

the breathable laminate including a breathable, microporous, elastic film and a nonwoven facing material bonded to the film;

wherein the laminate is selectively stretched in one or more regions thereof to form zones of differential breathability; and

wherein each of the zones of differential breathability comprises a portion of the film and a portion of the nonwoven facing material.

31. (Original) The outer cover of Claim 30, wherein the laminate is selectively stretched in one or more regions prior to incorporation in the absorbent article.

32. (Original) The outer cover of Claim 30, wherein the laminate is selectively stretched in one or more regions subsequent to incorporation in the absorbent article.

33. (Original) The outer cover of Claim 30, wherein the laminate is selectively stretched in one or more regions as the absorbent article is applied to a wearer.

34. (Original) The outer cover of Claim 30, wherein the laminate comprises at least one zone of moderate breathability and at least one zone of higher breathability.

35. (Original) The outer cover of Claim 34, wherein the laminate has a water vapor transmission rate of at least about 500 grams/m<sup>2</sup>-24 hours in the zone of moderate breathability.

36. (Original) The outer cover of Claim 34, wherein the laminate has a water vapor transmission rate of at least about 750 grams/m<sup>2</sup>-24 hours in the zone of moderate breathability.

37. (Original) The outer cover of Claim 34, wherein the laminate has a water vapor transmission rate of at least about 1000 grams/m<sup>2</sup>-24 hours in the zone of moderate breathability.

38. (Original) The outer cover of Claim 30, wherein the facing material is necked.

39. (Original) The outer cover of Claim 30, wherein the facing material is elastomeric.

40. (Original) The outer cover of Claim 30, wherein the selectively stretched regions are stretched at least twice.

41. (Previously presented) A method of making an outer cover for absorbent articles, comprising the steps of:

forming a breathable laminate by bonding a nonwoven facing material to a breathable, microporous, elastic film; and

selectively stretching the breathable laminate in one or more regions thereof to form zones of differential breathability; and

wherein each of the zones of differential breathability comprises a portion of the film and a portion of the nonwoven facing material.

42. (Original) The method of Claim 41, further comprising the step of selectively stretching the laminate in one or more regions prior to incorporation of the laminate in the absorbent article.

43. (Original) The method of Claim 41, further comprising the step of selectively stretching the laminate in one or more regions subsequent to incorporation of the laminate in the absorbent article.

44. (Original) The method of Claim 41, further comprising the step of selectively stretching the laminate in one or more regions as the absorbent article is applied to a wearer.

**9. EVIDENCE INDEX**

Applicants have no evidence to list.

**10. RELATED PROCEEDINGS INDEX**

As indicated above under "RELATED APPEALS AND INTERFERENCES," Applicants are not aware of any related Appeals or Interferences.